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Has further

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

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FILE: B-204921

DATE: December 1, 1981

MATTER OF: Nuzzi Bros. Transfer & Storage, Inc.

DIGEST:

1. While contracting agency may discuss preaward data with bidder prior to making responsibility determination, there is no requirement that bidder be advised of nonresponsibility determination prior to referral to Small Business Administration.
2. Question concerning size standard used in procurement is not for consideration by GAO since Small Business Administration has conclusive jurisdiction to hear appeal from contracting officer's determination.

Nuzzi Bros. Transfer & Storage, Inc. (Nuzzi), protests the manner in which the General Services Administration (GSA) (Region 2) determined that Nuzzi was nonresponsible under invitation for bids No. 4106-DM-NY (a total small business set-aside). Nuzzi contends that GSA should have discussed the determination with Nuzzi before the referral to the Small Business Administration (SBA) for a possible issuance of a certificate of competency (COC). Nuzzi also protests the \$2 million size standard in the invitation in view of the present inflationary forces in the economy.

The SBA on the basis of information provided by Nuzzi, determined that Nuzzi was ineligible for participation in the procurement since it was not a small business under the invitation size standard. Because of this, the Nuzzi bid was rejected by GSA.

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When a contracting agency determines that a small business bidder is nonresponsible, the agency is required to refer the matter to the SBA, which conclusively determines bidder responsibility by issuing or declining to issue a COC. 15 U.S.C. § 637(b)(7) (1976 and Supp. III, 1979); Dan's Janitorial Service & Supply, B-200360, January 22, 1981, 81-1 CPD 36. Although, prior to making a determination of responsibility, preaward data may be discussed with the bidder, if determined necessary by the contracting office, there is no requirement that a bidder be notified of a nonresponsibility determination by the contracting agency prior to SBA referral; notification is made by the SBA. Federal Procurement Regulations §§ 1-1.1205-3, 1-1.1207 (1964 ed. amend. 95); 13 C.F.R. § 125.5(b) (1981). In any event, the SBA did not refuse to issue a COC on the basis of the nonresponsibility determination. Rather, the SBA determined that Nuzzi did not qualify as a small business.)

(Under SBA regulations, the initial determination of the size standard to be used for a specific procurement is made by the contracting officer with the right of appeal to the Size Appeals Board of the SBA. 13 C.F.R. §§ 121.3-8, 121.3-6 (1981). The SBA determination on any size classification is conclusive, and, therefore, our Office does not consider this issue.) J.E.T.S. Inc., B-196763, December 26, 1979, 79-2 CPD 435.

(Accordingly, the protest is dismissed.)

Harry R. Van Cleve
Harry R. Van Cleve
Acting General Counsel